

Conference Engrossed

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

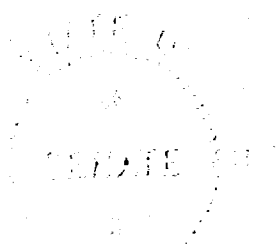
CHAPTER 319

# SENATE BILL 1378

AN ACT

AMENDING SECTION 38-848, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-848, Arizona Revised Statutes, is amended to  
3 read:

4 38-848. Fund manager

5 A. The fund manager shall consist of five members and shall have the  
6 rights, powers and duties that are set forth in this section. The term of  
7 office of members shall be three years to expire on the third Monday in  
8 January of the appropriate year. Members are eligible to receive  
9 compensation in an amount of fifty dollars a day, but not to exceed one  
10 thousand dollars in any one fiscal year, and are eligible for reimbursement  
11 of expenses pursuant to chapter 4, article 2 of this title. The fund manager  
12 consists of the following members appointed by the governor pursuant to  
13 section 38-211:

14 1. One elected member from a local board to represent the employees.

15 2. One member to represent the THIS state as an employer of public  
16 safety personnel. THIS MEMBER SHALL HAVE THE QUALIFICATIONS PRESCRIBED IN  
17 SUBSECTION R OF THIS SECTION.

18 3. One member to represent the cities as employers of public safety  
19 personnel.

20 4. An elected county or state official or a judge of the superior  
21 court, court of appeals or supreme court.

22 5. One public member. THIS MEMBER SHALL HAVE THE QUALIFICATIONS  
23 PRESCRIBED IN SUBSECTION R OF THIS SECTION.

24 B. All monies in the fund shall be deposited and held in a public  
25 safety personnel retirement system depository. Monies in the fund shall be  
26 disbursed from the depository separate and apart from all monies or funds of  
27 the state and the agencies, instrumentalities and subdivisions thereof. The  
28 monies shall be secured by the depository in which they are deposited and  
29 held to the same extent and in the same manner as required by the general  
30 depository law of the state. The fund is subject to the sole management of  
31 the fund manager for the purpose of this article.

32 C. All contributions under this system shall be forwarded to the fund  
33 manager and shall be held, invested and reinvested by the fund manager. All  
34 property and funds of the fund, including income from investments and from  
35 all other sources, shall be retained for the exclusive benefit of members, as  
36 provided in the system, and shall be used to pay benefits to members or their  
37 beneficiaries or to pay expenses of operation and administration of the  
38 system and fund.

39 D. The fund manager shall have the full power in its sole discretion  
40 to invest and reinvest, alter and change the monies accumulated under the  
41 system. The fund manager may delegate the authority it deems necessary and  
42 prudent to the administrator, employed by the fund manager pursuant to  
43 subsection K, paragraph 6 of this section, to invest the monies of the system  
44 if the administrator follows the investment guidelines, statement of  
45 investment policy and fund objectives promulgated by the fund manager. The

1 fund manager may commingle securities and monies of the fund subject to the  
2 crediting of receipts and earnings and charging of payments to the account of  
3 the appropriate employer. In making every investment, the fund manager shall  
4 exercise the judgment and care under the circumstances then prevailing which  
5 men of ordinary prudence, discretion and intelligence exercise in the  
6 management of their own affairs, not in regard to speculation but in regard  
7 to the permanent disposition of their funds, considering the probable income  
8 from their funds as well as the probable safety of their capital, provided:

9 1. That not more than seventy per cent of the pension fund shall be  
10 invested at any given time in corporate stocks, based on cost value of such  
11 stocks irrespective of capital appreciation.

12 2. That no more than five per cent of the pension fund shall be  
13 invested in securities issued by any one institution, agency or corporation,  
14 other than securities issued as direct obligations of and fully guaranteed by  
15 the United States government.

16 3. That not more than five per cent of the voting stock of any one  
17 corporation shall be owned.

18 4. That corporate stocks eligible for purchase shall be restricted to  
19 stocks that, except for bank stocks and insurance stocks, are either:

20 (a) Listed or approved on issuance for listing on an exchange  
21 registered under the securities exchange act of 1934, as amended (15 United  
22 States Code sections 78a through 78l).

23 (b) Designated or approved on notice of issuance for designation on  
24 the national market system of a national securities association registered  
25 under the securities exchange act of 1934, as amended (15 United States Code  
26 sections 78a through 78l).

27 (c) Listed or approved on issuance for listing on an exchange  
28 registered under the laws of this state or any other state.

29 (d) Listed or approved on issuance for listing on an exchange of a  
30 foreign country with which the United States is maintaining diplomatic  
31 relations at the time of purchase, except that no more than ten per cent of  
32 the pension fund shall be invested in foreign equity securities on these  
33 exchanges, based on the cost value of the stocks irrespective of capital  
34 appreciation.

35 E. Notwithstanding any other law, the fund manager shall not be  
36 required to invest in any type of investment that is dictated or required by  
37 any entity of the federal government and that is intended to fund economic  
38 development projects, public works or social programs, but may consider such  
39 economically targeted investments pursuant to its fiduciary responsibility.

40 F. Conference call meetings of the fund manager of the public safety  
41 personnel retirement system which are held for investment purposes only are  
42 not subject to the provisions of chapter 3, article 3.1 of this title, except  
43 that the fund manager shall maintain minutes of these conference call  
44 meetings and make them available for public inspection within twenty-four  
45 hours after the meeting. The fund manager shall review the minutes of each

1 conference call meeting and shall ratify all legal actions taken during each  
2 conference call meeting at the next scheduled meeting of the fund manager.

3 G. The fund manager shall not be held liable for the exercise of more  
4 than ordinary care and prudence in the selection of investments and  
5 performance of its duties under the system and shall not be limited to  
6 so-called "legal investments for trustees", but all funds of the system shall  
7 be invested subject to all of the conditions, limitations and restrictions  
8 imposed by law.

9 H. Except as provided in subsection D of this section, the fund  
10 manager may:

11 1. Invest and reinvest the principal and income of the pension fund  
12 without distinction between principal and income.

13 2. Sell, exchange, convey, transfer or otherwise dispose of any  
14 investments of the fund held in the name of the system by private contract or  
15 at public auction.

16 3. Also:

17 (a) Vote upon any stocks, bonds or other securities.

18 (b) Give general or special proxies or powers of attorney with or  
19 without power of substitution.

20 (c) Exercise any conversion privileges, subscription rights or other  
21 options and make any payments incidental to the exercise of the conversion  
22 privileges, subscription rights or other options.

23 (d) Consent to or otherwise participate in corporate reorganizations  
24 or other changes affecting corporate securities, delegate discretionary  
25 powers and pay any assessments or charges in connection therewith.

26 (e) Generally exercise any of the powers of an owner with respect to  
27 stocks, bonds, securities or other investments held in the fund.

28 4. Make, execute, acknowledge and deliver any other instruments that  
29 may be necessary or appropriate to carry out the powers granted in this  
30 section.

31 5. Register any investment held in the fund in the name of the fund or  
32 in the name of a nominee.

33 6. At the expense of the system, enter into an agreement with any bank  
34 or banks for the safekeeping and handling of securities and other investments  
35 coming into the possession of the fund manager. The agreement shall be  
36 entered into under terms and conditions that secure the proper safeguarding,  
37 inventory, withdrawal and handling of the securities and other investments.  
38 No access to and no deposit or withdrawal of the securities from any place of  
39 deposit selected by the fund manager shall be permitted or made except as the  
40 terms of the agreement may provide.

41 7. Appear before local boards and the courts of this state and  
42 political subdivisions of this state through counsel or appointed  
43 representative to protect the fund. The fund manager is not responsible for  
44 the actions or omissions of the local boards under this system but may seek  
45 review or rehearing of actions or omissions of local boards. The fund

1 manager does not have a duty to review actions of the local boards but may do  
2 so in its discretion in order to protect the fund.

3 8. Empower the fund administrator to take actions on behalf of the  
4 fund manager that are necessary for the protection and administration of the  
5 fund in accordance with the guidelines of the fund manager.

6 9. Do all acts, whether or not expressly authorized that may be deemed  
7 necessary or proper for the protection of the investments held in the fund.

8 I. Investment expenses and operation and administrative expenses of  
9 the fund manager shall be accounted for separately and allocated against  
10 investment income.

11 J. The fund manager, as soon as possible within a period of six months  
12 following the close of any fiscal year, shall transmit to the governor and  
13 the legislature an annual statement on the operation of the system  
14 containing, among other things:

15 1. A balance sheet.

16 2. A statement of income and expenditures for the year.

17 3. A report on an actuarial valuation of its assets and liabilities.

18 4. A detailed statement of the investments acquired and disposed of  
19 during the year.

20 5. A list of investments owned.

21 6. The total rate of return, yield on cost, and per cent of cost to  
22 market value of the fund.

23 7. Any other statistical and financial data that may be necessary for  
24 the proper understanding of the financial condition of the system and the  
25 results of its operations. A synopsis of the annual report shall be  
26 published for the information of members of the system.

27 K. The fund manager shall:

28 1. Maintain the accounts of the system and issue statements to each  
29 employer annually and to each member who may request it.

30 2. Report the results of the actuarial valuations to the local boards  
31 and employers.

32 3. Contract on a fee basis with an independent investment counsel to  
33 advise the fund manager in the investment management of the fund and with an  
34 independent auditing firm to audit the fund manager's accounting.

35 4. Permit the auditor general to make an annual audit and the results  
36 shall be transmitted to the governor and the legislature.

37 5. Contract on a fee basis with an actuary who shall make actuarial  
38 valuations of the system, be the technical adviser of the fund manager on  
39 matters regarding the operation of the funds created by the provisions of the  
40 system and perform other duties required in connection therewith. The  
41 actuary must be a member of a nationally recognized association or society of  
42 actuaries.

43 6. Employ, as administrator, a person, state department or other body  
44 to serve at the pleasure of the fund manager.

1           7. Establish procedures and guidelines for contracts with actuaries,  
2 auditors, investment counsel, AND legal counsel and for safeguarding of  
3 securities.

4           L. The administrator, under the direction of the fund manager, shall:

5           1. Administer ~~the provisions of~~ this article.

6           2. Invest the funds of the system as the fund manager deems necessary  
7 and prudent as provided in subsections D and H of this section and subject to  
8 the investment guidelines, statement of investment policy and fund objectives  
9 promulgated by the fund manager.

10          3. Establish and maintain an adequate system of accounts and records  
11 for the system which shall be integrated with the accounts, records and  
12 procedures of the employers so that the system operates most effectively and  
13 at minimum expense and that duplication of records and accounts is avoided.

14          4. In accordance with personnel rules and procedures and the budget  
15 adopted by the fund manager, hire such employees and services the  
16 administrator deems necessary and prescribe their duties.

17          5. Be responsible for income, the collection of the income and the  
18 accuracy of all expenditures.

19          6. Recommend to the fund manager annual contracts for the system's  
20 actuary, auditor, investment counsel, legal counsel and safeguarding of  
21 securities.

22          7. Perform additional duties and powers prescribed by the fund manager  
23 and delegated to the administrator.

24          M. The fund manager, the administrator and all persons employed by  
25 them are not under the jurisdiction of the department of administration or  
26 subject to section 38-611 or title 41, chapter 4, articles 5 and 6. The  
27 salaries of the administrator and other employees of the fund manager are the  
28 sole determination of the fund manager. Contracts for goods and services  
29 approved by the fund manager are not subject to title 41, chapter 23.

30          N. The attorney general or an attorney approved by the attorney  
31 general and paid by the fund shall be the attorney for the fund manager and  
32 shall represent the fund manager in any legal proceeding.

33          O. At least once in each five-year period after the effective date,  
34 the actuary shall make an actuarial investigation into the mortality, service  
35 and compensation experience of the members and beneficiaries of the system  
36 and shall make a special valuation of the assets and liabilities of the funds  
37 of the system. Taking into account the results of the investigation and  
38 special valuation, the fund manager shall adopt for the system such  
39 mortality, service and other tables deemed necessary.

40          P. On the basis of the tables the fund manager adopts, the actuary  
41 shall make a valuation of the assets and liabilities of the funds of the  
42 system not less frequently than every other year. By November 1 of each  
43 even-numbered year the fund manager shall provide a preliminary report and by  
44 December 15 of each even-numbered year provide a final report to the

1 governor, the speaker of the house of representatives and the president of  
2 the senate on the contribution rate for the two ensuing fiscal years.

3 Q. Neither the fund manager nor any member or employee of the fund  
4 manager shall directly or indirectly, for himself or as an agent, in any  
5 manner use the monies or deposits of the fund except to make current and  
6 necessary payments, nor shall the fund manager or any member or employee  
7 become an endorser or surety or in any manner an obligor for monies loaned by  
8 or borrowed from the fund.

9 R. THE MEMBERS OF THE FUND MANAGER WHO ARE APPOINTED PURSUANT TO  
10 SUBSECTION A, PARAGRAPHS 2 AND 5 OF THIS SECTION SHALL HAVE AT LEAST TEN  
11 YEARS' SUBSTANTIAL EXPERIENCE AS ANY ONE OR A COMBINATION OF THE FOLLOWING:

12 1. A PORTFOLIO MANAGER ACTING IN A FIDUCIARY CAPACITY.

13 2. A SECURITIES ANALYST.

14 3. AN EMPLOYEE OR PRINCIPAL OF A TRUST INSTITUTION, INVESTMENT  
15 ORGANIZATION OR ENDOWMENT FUND ACTING EITHER IN A MANAGEMENT OR AN INVESTMENT  
16 RELATED CAPACITY.

17 4. A CHARTERED FINANCIAL ANALYST IN GOOD STANDING AS DETERMINED BY THE  
18 ASSOCIATION FOR INVESTMENT MANAGEMENT AND RESEARCH.

19 5. A PROFESSOR AT THE UNIVERSITY LEVEL TEACHING ECONOMICS OR  
20 INVESTMENT RELATED SUBJECTS.

21 6. AN ECONOMIST.

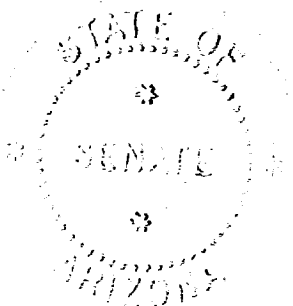
22 7. ANY OTHER PROFESSIONAL ENGAGED IN THE FIELD OF PUBLIC OR PRIVATE  
23 FINANCES.

24 Sec. 2. Retention of members

25 Notwithstanding section 38-848, Arizona Revised Statutes, as amended by  
26 this act, all persons serving as members of the fund manager on the effective  
27 date of this act continue to serve until the expiration of their normal  
28 terms. All subsequent appointments shall be made as prescribed by statute.

APPROVED BY THE GOVERNOR MAY 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2005.



Passed the House April 12, 20 05,

by the following vote: 56 Ayes,

2 Nays, 2 Not Voting



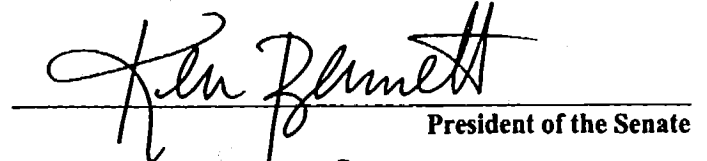
Speaker of the House  
Pro Tempore

Speman L. Moore  
Chief Clerk of the House

Passed the Senate March 8, 20 05,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting



President of the Senate

Channing Bellinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1378

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State



HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 10, 20 05,  
by the following vote: 48 Ayes,

4 Nays, 8 Not Voting

  
Speaker of the House  
*Pro Tempore*

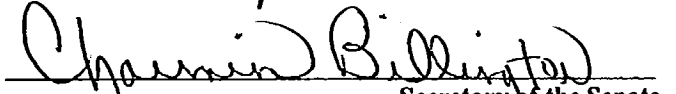
  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 4, 20 05,  
by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 11<sup>th</sup> day of May, 20 05

at 11:30 o'clock a. M.

  
Secretary to the Governor

Approved this 20 day of

May, 20 05,

at 940 o'clock A. M.

  
Governor of Arizona

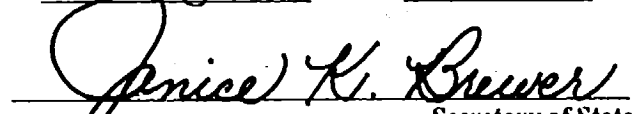
S.B. 1378

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 20 05

at 3:03 o'clock P. M.

  
Secretary of State